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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ALTON JONES,

12 Plaintiff,

13 v.

14 U.S. BORDER PATROL AGENT
15 HERNANDEZ, et al.,

16 Defendants.
17

Case No.: 16-CV-1986 W (WVG)

**ORDER GRANTING DEFENDANT'S
MOTION TO STRIKE [DOC. 74]**

18 Pending before the Court is Defendant's motion to strike an unauthorized claim for
19 relief in the Third Amended Complaint ("TAC"). [Doc. 74.] Plaintiff opposes.
20 [Doc. 77.] The Court decides the matter on the papers submitted and without oral
21 argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons that follow, the Court
22 grants Defendants' motion.

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1 **I. BACKGROUND**

2 On November 9, 2017, the Court granted Defendants’ motion to dismiss, *inter alia*,
3 the third cause of action in the Second Amended Complaint (“SAC”) as to Defendant
4 Bowen. (*Nov. 9, 2017 Order* [Doc. 71].) The SAC alleged an unconstitutional search of
5 Plaintiff only at the Imperial Beach Border Patrol station. (SAC [Doc. 38] ¶¶ 54, 88.)
6 The same is true of all previous complaints. (*FAC* [Doc. 9] ¶¶ 52, 69; *Compl.* [Doc. 1] ¶¶
7 50, 65.) From the original Complaint, filed on August 8, 2016, through the SAC, filed on
8 June 23, 2017, at no time did Plaintiff ever allege a search on the road before he arrived
9 at the station. (*Compl.* [Doc. 1] ¶¶ 35–40, 65; *FAC* [Doc. 9] ¶¶ 35–42; 69; *SAC* [Doc. 38]
10 ¶¶ 35–42.)

11 The Court’s November 9 order focused solely on the search at the station, as that
12 was the only search that Plaintiff had ever alleged. (*Nov. 9, 2017 Order* [Doc. 71].) It
13 dismissed the third cause of action against Defendants Johnson, Hernandez, Faatoalia,
14 and Bowen with leave to amend on the basis that the SAC contained no allegation that
15 they were involved in the search in question. (*Id.* [Doc. 71] 13:22–15:12; 22:4–13.)

16 Given that the deadline for moving to amend pleadings had passed in June of 2017,
17 the Court circumscribed Plaintiff’s leave to amend “in accordance with the terms of this
18 order.” (*See Scheduling Order* [Doc. 30] ¶ 1; *Nov. 9, 2017 Order* [Doc. 71] 22:12–13.)

19 On December 1, 2017, Plaintiff filed his Third Amended Complaint (“TAC”).
20 (*TAC* [Doc. 74].) This document for the first time alleged a separate search—one
21 involving Agent Bowen on the road before he was taken to the station. (*Id.* [Doc. 74] ¶¶
22 41, 91.) Defendant Bowen has moved to strike this allegation as outside the scope of
23 Plaintiff’s leave to amend, as granted in the Court’s prior order. (*Mot. to Strike* [Doc.
24 74].) Plaintiff opposes. (*Pl.’s Opp’n* [Doc. 77].)

25 For the reasons set forth below, the allegations in question are outside the scope of
26 Plaintiff’s leave to amend and will be stricken as impertinent. See Fed. R. Civ. P. 12(f).

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1 **II. LEGAL STANDARD**

2 **A. Motion to Strike Pursuant to Rule 12(f)**

3 Rule 12(f) allows a court to “strike from a pleading an insufficient defense or any
4 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “The
5 court may act . . . on its own[,] or . . . on motion made by a party either before responding
6 to the pleading or, if a response is not allowed, within 21 days after being served with the
7 pleading.” Id. “ ‘The function of a 12(f) motion to strike is to avoid the expenditure of
8 time and money that must arise from litigating spurious issues by dispensing with those
9 issues prior to trial’ ” Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th
10 Cir. 2010) (quoting Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d*
11 *on other grounds* by 510 U.S. 517 (1994)). Motions to strike are generally disfavored
12 and are “usually . . . denied unless the allegations in the pleading have no possible
13 relation to the controversy, and may cause prejudice to one of the parties.” See Travelers
14 Cas. & Sur. Co. of Am. v. Dunmore, 2010 WL 5200940, at *3 (E.D. Cal. 2010).

15 Redundant matter is the needless repetition of assertions. See Dunmore, 2010 WL
16 5200940, at *3. “ ‘Immaterial matter is that which has no essential or important
17 relationship to the claim for relief or the defenses being plead.’ ” Whittlestone, 618 F.3d
18 at 974 (quoting Fogerty, 984 F.2d at 1527). “Impertinent matter consists of statements
19 that do not pertain, and are not necessary, to the issues in question.” Id. (internal
20 quotation omitted). “Scandalous matters are allegations that unnecessarily reflect . . . on
21 the moral character of an individual or state . . . anything in repulsive language that
22 detracts from the dignity of the court.” Consumer Solutions REO, LLC v. Hillery, 658 F.
23 Supp. 2d 1002, 1020 (N.D. Cal. 2009) (quoting Corbell v. Norton, 224 F.R.D. 1, 5
24 (D.D.C. 2004)).

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1 **III. DISCUSSION**

2 The May 16, 2017 Scheduling Order set the deadline for amending the complaint
3 at June 23, 2017. (*Scheduling Order* [Doc. 30] ¶ 1.)

4 Plaintiff has not moved to amend since the expiration of that deadline. The only
5 claim at issue in the previous motion to dismiss—which resulted in a grant of leave to
6 amend—involved a search that was alleged to have taken place at the Border Patrol
7 station. (*See Nov. 9, 2017 Order* [Doc. 71].) That was the context of the prior order, and
8 that was the scope of the leave granted Plaintiff to amend the SAC “in accordance with
9 the terms of [that] order.” (*Id.* [Doc. 71] 22:7–9; 22:12–13.) In adding allegations
10 relating to a new search beyond that which was alleged in the previous complaints just
11 before the close of fact discovery on January 16, 2018 (*Scheduling Order* [Doc. 30] ¶ 6),
12 Plaintiff exceeded the scope of this Court’s leave to amend and circumvented Judge
13 Gallo’s scheduling order.

14 Plaintiff did not have leave of Court to allege an entirely new search, for which the
15 opposing parties were not on notice. The allegations of a search wholly distinct from that
16 analyzed in the prior order are impertinent and will be stricken. See Fed. R. Civ. P. 12(f);
17 Motion to Strike—Redundant, Immaterial, Impertinent, or Scandalous Matter, 5C Fed.
18 Prac. & Proc. Civ. § 1382 (3d ed. 2017) (“ ‘[I]mpertinent’ matter consists of statements
19 that do not pertain, and are not necessary, to the issues in question.”); Harrison v. Perea,
20 168 U.S. 311, 318–19 (1897) (“It is also said that impertinence is the introduction of any
21 matters in a bill, answer, or other pleading in the suit which are not properly before the
22 court for decision at any particular stage of the suit.”). If Plaintiff wants to allege a new
23 search at this stage of the case, he must move both for leave to amend his pleading and to
24 amend the scheduling order.

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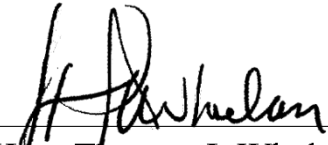
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1 **IV. CONCLUSION & ORDER**

2 Defendant Bowen's motion to strike is **GRANTED**. [Doc. 74.]

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4 **IT IS SO ORDERED.**

5 Dated: March 29, 2018

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7 Hon. Thomas J. Whelan
8 United States District Judge
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